

Internal Revenue Service

Number: **200823019**

Release Date: 6/6/2008

Index Number: 368.04-00, 355.01-01

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:01

PLR-150194-07

Date:

March 11, 2008

LEGEND:

Distributing =

Controlled =

State X =

Group A Shareholders =

Date 1 =

Business =

Dear :

This letter responds to your representative's letter dated October 31, 2007, requesting rulings as to the Federal income tax consequences of a proposed transaction. Additional information was submitted by letters dated December 30, 2007, January 10, 2008, February 22, 2008 and March 5, 2008. The material information submitted for consideration is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the proposed transaction: (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code (the "Code") and § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a fifty percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e) and § 1.355-7).

SUMMARY OF FACTS

Distributing is a closely held State X corporation owned by two family shareholder groups, Group A Shareholders and Group B Shareholders. Distributing has outstanding one class of voting common stock and one class of nonvoting preferred stock. At the time of the proposed transaction, the Group A and Group B Shareholders will equally own the outstanding common and preferred stock of Distributing.

Controlled is a State X corporation and has outstanding one class of voting common stock and one class of nonvoting preferred stock. Controlled is wholly owned by Distributing and was incorporated on Date 1 to effectuate the proposed transaction.

Distributing conducts Business. Financial information has been received indicating that Business has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Serious and irreconcilable disputes and management disagreements have arisen amongst the shareholders and have adversely affected the business operations of Distributing. In order to alleviate the problems caused by the disputes and the disagreements, the Group A and Group B Shareholders have decided to vertically separate Business.

PROPOSED TRANSACTION

To accomplish the separation of Business, Distributing has proposed the following transactions (the "Proposed Transaction"):

- (i) Distributing will transfer to Controlled a predetermined portion of its assets in exchange for stock of Controlled (the "Contribution"). The assets that will be contributed to Controlled will be determined pursuant to arms length negotiations between the Group A and Group B Shareholders.
- (ii) The Group B Shareholders will exchange all of their shares of Distributing stock for all of the outstanding shares of Controlled (the "Distribution"). Thereafter, the Group A Shareholders will own all of the Distributing stock, and the Group B Shareholders will own all of the Controlled stock.

There may be indebtedness between Controlled, as the debtor, and Distributing as the creditor evidenced by a promissory note (the "Note") which will be transferred by Controlled to Distributing in connection with the Contribution. The amount of the debt will be established in order to equalize the value of the assets transferred to Controlled with the value of the assets retained by Distributing as part of the Contribution. The terms of repayment and interest will be set by arms length negotiations between the Group A and B Shareholders, and will be set forth in the Note on the date of the Distribution.

REPRESENTATIONS

The following representations have been made with respect to the Proposed Transaction:

- (a) The fair market value of the Controlled stock to be received by the Group B Shareholders will be approximately equal to the fair market value of the Distributing stock surrendered by the Group B Shareholders in the Distribution.
- (b) The total adjusted bases and the fair market value of the assets to be transferred to Controlled by Distributing will each equal or exceed the sum of any liabilities assumed by Controlled plus any liabilities to which the transferred assets will be subject; and any liabilities assumed in the transaction and any liabilities to which the transferred assets are subject were incurred in the ordinary course of business and are associated with the assets being transferred.

- (c) No part of the consideration to be distributed by Distributing will be received by a shareholder as a creditor, employee, or in any capacity other than that of a Distributing shareholder.
- (d) The five years of financial information submitted on behalf of Distributing is representative of Distributing's present operation, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.
- (e) Following the transaction, Distributing and Controlled will each continue, independently and with its separate employees, the active conduct of its share of all the integrated activities of the business conducted by Distributing prior to consummation of the transaction.
- (f) The Distribution is carried out for the following corporate business purposes: the separation of Distributing and Controlled will enable the corporations to resolve serious and irreconcilable disputes and management disagreements that have arisen among the shareholders of Distributing, and which have given rise to unresolvable and systemic disputes relating to the present and future business, management and operation of Distributing's businesses. The division is advisable in order to preserve the value and businesses of Distributing, and to resolve the disputes between the Group A and B Shareholders.
- (g) The transaction is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.
- (h) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing fifty percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or fifty percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in § 355(d)(5) and (d)(8)) during the five-year period (determined after applying § 355(d)(6)) ending on the Distribution date.
- (i) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing fifty percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or fifty percent or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five year period (determined after applying § 355(d)(6)) ending on the Distribution date, or (ii) attributable to dispositions on Distributing stock that was acquired by

purchase (as defined in § 355(d)(5) and (8)) during the five year period (determined after applying § 355(d)(6)) ending on the Distribution date.

- (j) The income tax liability for the taxable year in which investment credit property (including any building to which § 47(d) applies), if any, is transferred will be adjusted pursuant to § 50(a)(1) or (a)(2) (or § 47, as in effect before amendment by Public Law 101-508, Title 11, 104 Stat. 1388, 536 (1990), if applicable) to reflect an early disposition of the property.
- (k) The indebtedness owed by Controlled to Distributing after the Distribution will not constitute stock or securities.
- (l) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the transaction.
- (m) Payments made in connection with all continuing transactions, if any, between Distributing and Controlled, will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (n) No two parties to the transaction are investment companies as defined in §§ 368(a)(2)(F)(iii) and (iv).
- (o) The Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a fifty percent or greater interest (within the meaning of § 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).

RULINGS

Based solely on information submitted and the representations set forth above, we rule as follows:

- (1) The Contribution, followed by the Distribution, will be a reorganization under § 368(a)(1)(D). Distributing and Controlled each will be "a party to a reorganization" within the meaning of § 368(b).
- (2) Gain, if any, will be recognized by Distributing on the Contribution in an amount not exceeding the value of the Note received by Distributing. Sections 357(a), 361(a), and 361(b)(1)(B). No loss will be recognized. Section 361(b)(2).
- (3) No gain or loss will be recognized by Controlled on the Contribution. Section 1032(a).

- (4) The basis that Controlled will have in each asset received from Distributing will equal the basis of that asset in the hands of Distributing, increased by any gain recognized by Distributing on the Contribution. Section 362(b).
- (5) The holding period for each asset received by Controlled from Distributing will include the period during which Distributing held the asset. Section 1223(2).
- (6) No gain or loss will be recognized by Distributing on the Distribution. Section 361(c).
- (7) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) the Group B Shareholders upon their receipt of Controlled stock in exchange for their Distributing stock. Sections 355(a).
- (8) The basis of the Controlled stock in the hands of the Group B Shareholders after the Distribution will, in each instance, equal the basis of the respective Distributing stock surrendered by the shareholder in exchange therefore. Section 358(a)(1).
- (9) The holding period of the Controlled stock received by the Group B Shareholders will, in each instance, include the holding period of the respective Distributing stock surrendered by the shareholder, provided such stock is held as a capital asset on the date of the Distribution. Section 1223(1).
- (10) Proper allocation of Distributing's earnings and profits will be made under §§ 312(h) and 1.312-10(a).

CAVEATS

No opinion is expressed about the tax treatment of the Proposed Transaction described above under other provisions of the Code and regulations or the tax treatment of any condition existing at the time of, or effects resulting from, the Proposed Transaction that is not specifically covered by the above rulings. In particular, no opinion is expressed regarding: (i) whether the Proposed Transaction satisfies the business purpose requirement of § 1.355-2(b); (ii) whether the Proposed Transaction is used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both (see § 355(a)(1)(B) and § 1.355-2(d)); and (iii) whether the Proposed Transaction is part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii).

PROCEDURAL STATEMENTS

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Mark S. Jennings
Chief, Branch 1
Office of Associate Chief Counsel (Corporate)

cc: